

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA**

JANE DOE,

Plaintiff,

v.

Case No. 24-CV-00177-SEH-MTS

**PEDIATRIC DENTAL GROUP,
LLC,
PEDIATRIC DENTAL GROUP II,
LLC,
HERO VISION OF UTICA, PLLC,
and
HERO DVO, LLC,**

Defendants.

OPINION AND ORDER

Before the Court is Plaintiff's Motion to Remand for Lack of Subject-Matter Jurisdiction and for Fees and Costs and Brief in Support Thereof [ECF No. 29], and Defendant Hero DVO, LLC's d/b/a Hero Practice Services' Motion for Order to File Exhibits Under Seal, [ECF No. 30].

I. Motion to Seal [ECF No. 30]

Defendant asserts that certain documents it wishes to attach as exhibits to its response to Plaintiff's motion to remand contain "confidential trade practices." [ECF No. 30 at 1]. Defendant filed these documents under seal at [ECF No. 32].

A party moving to file documents under seal “must establish that the interest in restricting the public's access to specific information in their case ‘outweighs the public interest in access, particularly ... [where] the parties themselves placed these [documents] at the center of th[e] controversy....’” *Allen v. Clinton HMA LLC*, No. CIV-19-00527-JD, 2021 WL 11960491, at *1 (W.D. Okla. Jan. 29, 2021) (quoting *Colony Ins. Co. v. Burke*, 698 F.3d 1222, 1241 (10th Cir. 2012)). Upon reviewing the exhibits filed under seal at [ECF No. 32], the Court finds that the Defendant’s interest in keeping its trade practices confidential outweighs the public interest. Additionally, Plaintiff did not timely respond to Defendant’s motion to seal. Therefore, pursuant to LCvR7-1(e), the Court deems Defendant’s motion confessed. For all these reasons, Defendant’s motion to file exhibits under seal [ECF No. 30] is GRANTED. Therefore, the exhibits filed at [ECF No. 32] SHALL REMAIN SEALED.

II. Motion to Remand [ECF No. 29]

Defendants state in their response to Plaintiff’s motion to remand that they “agree to voluntarily remand this action.” [ECF No. 31 at 1]. Because Defendants agree to remand this case, the only issue left for the Court to decide is Plaintiff’s request for fees and costs. [ECF No. 29 at 28–29].

Under 28 U.S.C. § 1447(c), “An order remanding the case *may* require payment of just costs and any actual expenses, including attorney fees,

incurred as a result of the removal.” (emphasis added). Awarding fees and costs is a matter of discretion. *GS Farms LLC v. Prolific Farms, LLC*, No. 21-CV-00502-GKF-SH, 2021 WL 9682123, at *2 (N.D. Okla. Dec. 23, 2021) (citing *Huffman v. Saul Holdings Ltd. P’ship*, 262 F.3d 1128, 1134 (10th Cir. 2001)). “Absent unusual circumstances, courts may award attorney's fees under § 1447(c) only where the removing party lacked an objectively reasonable basis for seeking removal.” *Martin v. Franklin Capital Corp.*, 546 U.S. 132, 141 (2005).

The Court has reviewed all of the parties’ submissions on this issue, and it has studied the relevant authority. Defendants’ stated grounds for removal nearly fail to clear the low bar of objective reasonability. However, the Court also notes that some of the issues raised by the parties have not been squarely decided in the Tenth Circuit. With all of this in mind, the Court declines to award fees and costs in this case. Therefore, Plaintiff’s motion for fees and costs pursuant to 28 U.S.C. § 1447(c) is DENIED.

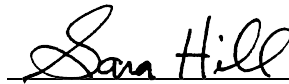
III. Conclusion

Defendant Hero DVO, LLC d/b/a Hero Practice Services’ Motion for Order to File Exhibits under Seal [ECF No. 30] is GRANTED.

Plaintiff’s Motion to Remand for Lack of Subject-Matter Jurisdiction and for Fees and Costs and Brief in Support Thereof [ECF No. 29] is GRANTED in part and DENIED in part as set forth above.

The Court REMANDS this matter to the District Court of Tulsa County, Oklahoma, and DIRECTS the Clerk of this Court to send a certified copy of this Order to the Clerk of the state court to which this matter is remanded. Plaintiff's request for fees and costs pursuant to 28 U.S.C. § 1447(c) is DENIED.

DATED this 3rd day of October, 2024.

A handwritten signature in black ink, appearing to read "Sara Hill", is written over a horizontal line.

Sara E. Hill
UNITED STATES DISTRICT JUDGE